This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 4/15/03.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
DEANNE BORCHELT,	)	
	)	
Complainant,	)	
	)	**CHARGE NO(S):** 1999CF2163
and	)	**EEOC NO(S):** 21B991575
	)	**ALS NO(S):** 11300
COUNTY OF GRUNDY,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion for Summary Decision along with Respondent's Memorandum in Support of Motion for Summary Decision with affidavits and exhibits attached. Complainant filed a written Response to the motion with attached exhibits. The Respondent filed a Reply with attached exhibits. The matter is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondent contends that a decision should issue in its favor as a matter of law because Complainant cannot establish a prima facie case of handicap discrimination. Respondent argues; 1) Complainant's condition is related to her ability to perform the functions of her job and, as a result, Complainant is not "handicapped" within the meaning of the Act; 2) Complainant was not treated less favorably than similarly-situated non-handicapped employees; and 3) the accommodation requested by Complainant was not a reasonable accommodation within the meaning of the Act.

Complainant objects to summary decision and argues that Respondent treated Complainant differently from other similarly situated employees. Complainant contends that Respondent is not entitled to Summary Decision because Complainant has presented evidence of discrimination. Complainant argues that her condition is unrelated to her ability to perform the functions of her job and that lifting and standing/walking are not "essential" functions of her job. Complainant also argues that her request for accommodation was reasonable.

FINDINGS OF FACT

The findings of fact are based upon the briefs filed in this matter. The facts marked with asterisks are facts which were admitted as a result of Complainant's failure to file a Response or Answers to Respondent's Request to Admit. Thus, based on the record in this matter, I make the following findings of fact:

1. Complainant Deanne Borchelt suffers from an injury to her hip.

2. Complainant was hired on October 9, 1979 by Respondent Grundy County, as a Nurse's Aid, and worked as a Licensed Practical Nurse in a Unit Nurse Supervisor position from January 12, 1983 until March 11, 1999 when she was not allowed to come back to work by Respondent.

3. The Unit Nurse Supervisor and Treatment Nurse positions require the ability to stand for periods longer than 20 minutes. *

4. The Unit Nurse Supervisor and Treatment Nurse positions require the ability to lift more than 25 pounds. *

5. At Respondent Grundy County, a Unit Nurse Supervisor and a Treatment Nurse must be able to perform the following functions:

a. Standing/walking for extended periods;
b. Lifting residents' limbs;
c. Turning residents;
d. Treating confused and/or combative residents; and
e. Performing "med. Passes." *

5. When Complainant sought to return to work in March of 1999, she was unable to perform her duties as a Unit Nurse Supervisor or a Treatment Nurse within the restrictions set forth in the Return-to-Work Certificate. *

6. Because of the restrictions set forth in the March 10, 1999 Return-to-Work Certificate, Complainant was unable to perform the following duties and functions of a Unit Nurse Supervisor or a Treatment Nurse:

f. Standing/walking for extended periods;
g. Lifting residents' limbs;
h. Turning residents;
i. Treating confused and/or combative residents; and
j. Performing "med. Passes." *

7. Complainant was not allowed to come back to work by Respondent because she could not perform the required functions of a Unit Nurse Supervisor or Treatment Nurse even with reasonable accommodation.

CONCLUSIONS OF LAW

1. Complainant is an “aggrieved party” as defined by section 1-103(b) of the Illinois Human Rights Act, 775 ILCS 5-1-101 et seq. (1996).

2. Respondent is an “employer” as defined by section 2-101(B) (1) (a) of the Act and is subject to the provisions of the Act.

3. The Commission has jurisdiction over the parties to and the subject matter of this action.

4. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders.

5. Complainant has failed to show that she is "handicapped" within the meaning of the Illinois Human Rights Act, 775 ILCS 5/1-103 (Q) and (I).

5. Complainant has failed to present any direct evidence of handicap discrimination.

6. Complainant cannot establish a *prima facie* case of handicap discrimination.

7. There is a no genuine issue of material fact on the issue of handicap discrimination.

8. Respondent has filed competent, admissible evidence to show that the reasons for terminating Complainant was not based on her condition of handicap, but was based upon Complainant's inability to perform the required job functions even with reasonable accommodation.

9. All of the evidence in the record shows that Complainant's handicap was not a factor in Respondent's decision to terminate her employment. There is no evidence in the record from which a fact-finder might draw a reasonable inference of handicap discrimination.

10. Based on the record in this matter, there is no issue of material fact for decision. Respondent is, therefore entitled to a summary decision in its favor as a matter of law.

DETERMINATION

Respondent's Motion for Summary Judgment should be granted because, based upon the admissible evidence in the record, there is no genuine issue of material fact as to Complainant's claim that Respondent discriminated against her on the basis of her pregnancy.

DISCUSSION

This case is being considered pursuant to Respondent's Motion for Summary Judgment, so certain special rules must be followed. A summary decision is analogous to a summary judgment. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Strunin and Marshall Field & Co., 8 Ill. HRC Rep. 199 (1983). Because the resulting dismissal of the cause of action is a drastic measure, summary judgment should be awarded with caution. Solone v. Reck, 32 Ill.App.2d 308, 177 N.E.2d 879 (1st Dist. 1961). A court must consider the record as a whole, construing "the pleadings, depositions, and affidavits most strictly against the moving party and most liberally in favor of the opponent in order to determine whether there is a genuine issue as to a material fact." Rivan Die Mold Corp. v. Stewart-Warner Corp., 26 Ill.App.3d 637, 641, 325 N.E.2d 357, 360.

An order was entered on May 15, 2002 by Administrative Law Judge William H. Hall granting Respondent's motion for an order deeming matters admitted, except for Admission Number 35, which was stricken. Commission Rule 5300.745 states that when requests to admit facts and the genuineness of documents that are not responded to within

twenty-eight days, those facts and the genuineness of those documents are deemed admitted. Therefore, due to her failure to respond, Complainant has admitted all of the matters of fact contained in Respondent's Request to Admit. (See, People v. Mindham, 253 Ill. App.3d 792, 625 N.E.2d 835 (Fifth Dist. 1994).

Although there is no requirement that a Complainant prove her case to overcome a motion for summary decision, the complainant is required to present some factual basis that would arguably entitle her to judgment under the applicable law. (See, Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1980).). If a party supplies sworn facts which warrant judgment in its favor as a matter of law, the opponent may not rest on her pleadings to create a genuine issue of material fact. (See, Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 642 N.E.2d 486, 204 Ill.Dec. 785, 789 (1994). In this case, Respondent has supplied admitted facts, which are analogous to sworn facts for the purpose of summary decision.

As with any case of unequal treatment based upon handicap, the elements of a prima facie case will vary according to the specific claim. Generally, in establishing a *prima facie* case of handicap discrimination under the Human Rights Act, a Complainant must show that: (1) she is handicapped within the definition of the Act; (2) her handicap is unrelated to her ability to perform the functions of the job she was hired to perform; and (3) an adverse job action was taken against Complainant related to her handicap. See, Whipple v. Illinois Department of Rehabilitation Services, et al., 269 Ill.App.3d 554, 646 N.E.2d 275, 206 Ill.Dec. 908 (1995).

In terms of the first element of a *prima facie* case of handicap discrimination, Complainant has shown that her hip injury qualifies under 775 ILCS 5/1-103 (Q) of the

Act to categorize her as being "handicapped." Respondent's refusal to allow Complainant to come back to work qualifies as an adverse action, thus fulfilling the third element of a *prima facie* case of handicap discrimination. The only issue remaining is whether Complainant's handicap is unrelated to her ability to perform the functions of the job she was hired to perform. Respondent argues that the admitted facts show that Complainant's hip condition is clearly related to her ability to perform the functions of her job, and as such she cannot perform her duties as a Unit Nurse Supervisor or Treatment Nurse with or without accommodation. Respondent further argues that as a result, Complainant is not "handicapped" within the meaning of the Illinois Human Rights Act; therefore, their refusal to return her to work did not constitute "unlawful discrimination" as defined in the Act.

In response, Complainant cites to the case of Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 699 N.E.2d 143, 232 Ill.Dec. 696 (3rd Cir. 1998) for the proposition that a triable issue of fact exists where a Complainant's hip condition does not render her unable to perform the essential functions of a Unit Nurse Supervisor when "lifting" and "standing/walking" requirements can be reasonably accommodated. The problem with this argument is that there is no issue of accommodation present in this case. The uncontested facts in this case show that the requirements for the duties of a Unit Nurse Supervisor and for a Treatment Nurse is that she be able to stand for more than 20 minutes and that she lift more than 25 pounds. The uncontested facts show that Complainant was not capable of standing more than 20 minutes nor could she lift more than 25 pounds due to her hip injury. Given the circumstances, no accommodation would have been reasonable, short of reassigning

some limited duties of the Unit Nurse Supervisor and the Treatment Nurse positions, while at the same time allowing Complainant not to lift more than 25 pounds or stand for longer than 20 minutes. Case law makes it clear that employers are not required under the Human Rights Act to reassign or transfer to a different job an employee whose handicap precludes her from doing her original job. (See, for example, Caterpillar v. Human Rights Commission, 154 Ill.App. 3d 424, 506 N.E.2d 1029, 107 Ill.Dec. 138 (3rd Dist. 1987)).

I agree with Respondent's contention that the admitted facts show that Complainant's hip condition is clearly related to her ability to perform the functions of her job, and as such she cannot perform her duties as a Unit Nurse Supervisor or Treatment Nurse with or without accommodation. Therefore, based on the record in this matter, there are no issues of material fact as to whether Complainant's handicap played a part in Respondent's decision not to allow Complainant back to work. Complainant has not submitted competent, admissible evidence from which a fact finder may draw an inference of handicap discrimination.

CONCLUSION

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary

judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

There appears to be no evidence in the record to show that the Complainant was terminated from her employment due to her handicap. As such, the Complainant has failed to establish a *prima facie* case of illegal discrimination. Taking the evidence in the record as competent, it appears that there is no genuine issue of material fact on the issue of whether Complainant's handicap was a determining factor in Respondent's employment action. Therefore, Respondent's Motion for Summary Decision should be granted as a matter of law.

RECOMMENDATION

Thus, for all of the above reasons, it is recommend that Respondent's Motion for Summary Decision be granted, and that the Complaint and underlying Charge of Discrimination in this matter be dismissed with prejudice as against Respondent.

HUMAN RIGHTS COMMISSION

_____

BY:
NELSON EDWARD PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 18, 2003